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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 12th November, 1986:—

BILL No. XLI OF 1986

A Bill to provide for the regulation of production, supply and distribution of infant milk foods and feeding bottles with a view to the protection and promotion of breast-feeding and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Infant Milk Foods and Feeding Bottles (Regulation of Production, Supply and Distribution) Act, 1986.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. (1) In this Act, unless the context otherwise requires,—

(a) “advertisement” includes any notice, circular, label, wrapper and other document and also includes any visible representation or announcement made by means of any light, sound, smoke or gas;

(b) “container” means a box, bottle, casket, tin, can, barrel, case, tube, receptacle, sack, wrapper or other thing in which any infant milk food or feeding bottle is placed or packed for sale or distribution;

Short title, extent and commencement.

Definitions.

(c) "feeding bottle" means any bottle or receptacle used for the purpose of feeding infant milk foods, and includes teats and valves attached or capable of being attached to such bottles or receptacles;

(d) "health care system" means an institution or organisation engaged, either directly or indirectly, in health care for mothers, infants or pregnant women, and includes a health worker in private practice, but does not include a pharmacy or drug store;

(e) "health worker" means a person engaged in health care for mothers, infants or pregnant women;

(f) "infant milk food" means any food being marketed or otherwise represented as a partial or total replacement for mother's milk, whether or not it is suitable for such replacement;

(g) "label" means a display of written, marked, stamped, printed or graphic matter affixed to, or appearing upon, any container;

(h) "prescribed" means prescribed by rules made under this Act.

(2) Any reference in this Act to any other enactment or any provision thereof, shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

3. No person shall,—

(a) advertise, or take part in the publication of any advertisement, for the distribution, sale or supply of infant milk foods or feeding bottles; or

(b) give an impression or create a belief in any manner that feeding of infant milk foods is equivalent to, or better than, mother's milk; or

(c) take part in the promotion of use or sale of infant milk foods or feeding bottles otherwise than in accordance with the provisions of this Act.

4. No person shall,—

(a) supply or distribute samples of infant milk foods or feeding bottles or gifts of utensils or other articles; or

(b) contact any pregnant woman or the mother of an infant; or

(c) offer inducement of any other kind,

for the purpose of promoting the use or sale of infant milk foods or feeding bottles.

5. No person shall donate or distribute any informational or educational equipment or material relating to infant milk foods or feeding bottles:

Provided that nothing in this section shall apply to the donation or distribution, subject to such conditions and restrictions as may be prescribed, of such equipment or material through the health care system.

Prohibition of advertisements, etc., for sale of infant milk foods or feeding bottles.

Prohibition of incentives for the use or sale of infant milk foods or feeding bottles.

Donation of equipment or materials relating to infant milk foods or feeding bottles.

37 of 1954

6. (1) Without prejudice to the provisions of the Prevention of Food Adulteration Act, 1954 and the rules made thereunder, no person shall produce, supply or distribute any infant milk food unless every container thereof or any label affixed thereto indicates in a clear, conspicuous and in an easily readable and understandable manner the words "important notice" in capital letters in such language as may be prescribed and indicating thereunder the following particulars in the same language, namely:—

Information on containers and labels of infant milk foods.

(a) a statement "mother's milk is best for your baby" in capital letters;

(b) a statement that infant milk food should be used only on the advice of a health worker as to the need for its use and the proper method of its use;

(c) a warning that infant milk food is not the sole source of nourishment of an infant;

(d) the instructions for its appropriate preparation and a warning against the health hazards of its inappropriate preparation;

(e) the ingredients used;

(f) the composition or analysis;

(g) the storage conditions required;

(h) the batch number and the date before which infant milk food is to be consumed, taking into account the climatic and storage conditions of the country;

(i) such other particulars as may be prescribed.

(2) No container or label referred to in sub-section (1) shall,—

(a) have the words "infant milk food" or any other words to that effect; or

(b) have pictures of infants; or

(c) have pictures or other graphic material or phrases designed to increase the saleability of infant milk food; or

(d) use on it the word "humanised" or "maternalised" or any other similar word; or

(e) bear on it such other particulars as may be prescribed.

7. (1) Every educational or other material, whether audio or visual, dealing with pre-natal or post-natal care or with the feeding of an infant and intended to reach pregnant women or mothers of infants shall include clear information on,—

Educational and other materials relating to feeding of infants to contain certain particulars.

(a) the benefit and superiority of breast-feeding;

(b) the preparation for, and the continuance of, breast-feeding;

(c) the harmful effects on breast-feeding due to the partial adoption of bottle feeding;

(d) the difficulties in reverting to breast-feeding of infants after a period of feeding by infant milk food;

(e) the financial and social implications in making use of infant milk foods and feeding bottles;

(f) the health hazards of improper use of infant milk foods and feeding bottles;

(g) such other matters as may be prescribed.

(2) No material referred to in sub-section (1) shall be utilised to promote the use or sale of infant milk foods or feeding bottles.

Health
care
system.

8. (1) No person shall use any health care system for the display of playcards or posters relating to, or for the distribution of, materials for the purpose of promoting the use or sale of infant milk foods or feeding bottles:

Provided that the provisions of this sub-section shall not apply to—

(a) the donation or distribution of informational or educational equipment or material made in accordance with the proviso to section 5; and

(b) the dissemination of information to a health worker about the scientific and factual matters relating to the use of infant milk foods or feeding bottles along with the information specified in sub-section (1) of section 7.

(2) No person who produces, supplies, distributes or sells infant milk foods or feeding bottles shall make any payment to any person who works in the health care system for the purpose of promoting the use or sale of such foods or bottles.

(3) No person, other than a health worker, shall demonstrate feeding with infant milk foods to a mother of an infant or to any member of her family and such health worker shall also clearly explain to such mother or other member the hazards of improper use of infant milk foods and feeding bottles.

(4) (a) No person, other than an institution or organisation, engaged in health care for mothers, infants or pregnant women, shall distribute infant milk foods or feeding bottles to a mother who cannot resort to breast-feeding and who cannot afford to purchase infant milk foods or feeding bottles.

(b) Any institution or organisation referred to in clause (a) may accept donations of infant milk foods or feeding bottles from any person or purchase the same at a price lower than their sale price for the purpose of utilising them in the said institution or organisation or for distribution outside that institution or organisation for recuperation of mal-nourished infants and other medical reasons:

Provided that such donations or purchases shall not amount to an inducement for promoting the use or sale of infant milk foods or feeding bottles.

(c) Where any institution or organisation referred to in clause (a) intends to use the infant milk foods or feeding bottles so donated or

purchased for distribution outside such institution or organisation to a mother of an infant who cannot resort to breast-feeding or who cannot afford to purchase the same, the institution or organisation shall continue such distribution as long as such infant needs them.

(d) Where any person who donates infant milk foods or feeding bottles or sells the same at a price lower than their sale price to any institution or organisation referred to in clause (a) for distribution outside such institution or organisation, to a mother of an infant who cannot resort to breast-feeding or who cannot afford to purchase the same, such person shall continue such donations as long as such infant needs them.

9. (1) No person who produces, supplies, distributes or sells infant milk foods or feeding bottles shall offer or give, directly or indirectly, any financial inducements or gifts to a health worker or to any member of his family for the purpose of promoting the use of such foods or bottles.

Inducement to health worker for promoting use of infant milk foods, etc.

(2) Where such person makes any contribution to, or incurs any expenditure on, a health worker either directly or indirectly, such person and such health worker shall disclose the same to the institution or organisation to which such health worker is attached.

10. (1) No person who produces, supplies, distributes or sells infant milk foods or feeding bottles shall fix the remuneration of any of his employees or give any commission to such employee on the basis of the volume of sale of such foods or bottles made by such employee.

Special provision relating to employees of person who produces, supplies, distributes or sells infant milk foods, etc.

(2) The employees of such person shall not perform any function which relates to educating a pregnant woman or mother of an infant on pre-natal or post-natal care of the infant.

11. (1) No person shall sell or otherwise distribute any infant milk food unless it conforms to the standards specified for such food under the Prevention of Food Adulteration Act, 1954, and the rules made thereunder and the container thereof has the relevant Indian Standards Institution certification mark to indicate that the infant milk food conforms to such standards.

37 of 1954.

Standard, of infant milk food, etc.

(2) No person shall sell or otherwise distribute any feeding bottle unless it conforms to the standards specified by the Indian Standards Institution for feeding bottles and the certification mark is affixed on its container.

37 of 1954.

12. (1) Any food inspector appointed under section 9 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the food inspector) or any officer not below the rank of a Class I officer authorised in this behalf by the State Government (hereinafter referred to as the authorised officer) may, if he has any reason to suspect that any provision of section 6 or section 11 has been or is being contravened enter and search at any reasonable time any factory building, business premises or any other place where any trade or commerce in infant milk foods or feeding bottles is carried on or such foods or bottles are produced, supplied or distributed.

Powers of entry and search.

2 of 1974.

(2) The provisions of the Code of Criminal Procedure, 1973, relating to searches and seizures shall, so far as may be apply to every search or seizure made under this Act.

Power to
seize
infant
milk foods,
etc., or
containers
thereof.

13. (1) If any food inspector or authorised officer has reason to believe that, in respect of any infant milk food or feeding bottle or container thereof, the provisions of this Act have been or are being contravened, he may seize such food or bottle or container.

(2) No such food or bottle or container shall be retained by any food inspector or authorised officer for a period exceeding ninety days from the date of its seizure unless the approval of the District Judge, within the local limits of whose jurisdiction such seizure has been made, has been obtained for such retention.

Confis-
cation.

14. Any infant milk food or feeding bottle or container thereof, in respect of which any provision of this Act has been or is being contravened, shall be liable to confiscation:

Provided that where it is established to the satisfaction of the court adjudging the confiscation that the person in whose possession, power or control any such food or bottle or container is found is not responsible for the contravention of the provisions of this Act, the court may, instead of making an order for the confiscation of such food or bottle or container, make such other order authorised by this Act against the person guilty of the breach of the provisions of this Act as it may think fit.

Power
to give
option
to pay
cost in
lieu of
confis-
cation.

15. (1) Whenever any confiscation is authorised by this Act, the court adjudging it may, subject to such conditions as may be specified in the order adjudging the confiscation, give to the owner thereof an option to pay in lieu of confiscation such cost not exceeding the value of the infant milk food or feeding bottle or container thereof in respect of which the confiscation is authorised as the court thinks fit.

(2) On payment of the cost ordered by the court the seized infant milk food or feeding bottle or container shall be returned to the person from whom it was seized on the condition that such person shall, before making any distribution, sale or supply of such food, bottle or container, give effect to the provisions of this Act.

Con-
fisca-
tion not
to in-
terfere
with
other
punish-
ments.

16. No confiscation made or cost ordered to be paid under this Act shall prevent the infliction of any punishment to which the person affected thereby is liable under the provisions of this Act or under any other law.

Adjudica-
tion.

17. Any confiscation may be adjudged or costs may be ordered to be paid,—

(a) without any limit, by the principal civil court of original jurisdiction within the local limits of whose jurisdiction such confiscation has been made or costs have been ordered to be paid, as the case may be;

(b) subject to such limits as may be specified by the Central Government in this behalf, by such other court, not below a civil court having pecuniary jurisdiction exceeding rupees five thousand, as the Central Government may, by notification in the Official Gazette, authorise in this behalf.

18. (1) No order adjudicating confiscation or directing payment of costs shall be made unless the owner of the infant milk food or feeding bottle or container thereof has been given a notice in writing informing him of the grounds on which it is proposed to confiscate such food or bottle or container, and giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the confiscation and if he so desires, of being heard in the matter:

Giving
of op-
portunity
to the
owner of
the
seized
infant
milk food
or feeding
bottle or
con-
tainer
thereof.

Provided that where no such notice is given within a period of ninety days from the date of the seizure of the infant milk food or feeding bottle or container thereof, such food or bottle or container shall be returned after the expiry of that period to the person from whose possession it was seized.

5 of 1908.

(2) Save as otherwise provided in sub-section (1), the provisions of the Code of Civil Procedure, 1908, shall, so far as may be, apply every proceeding referred to in sub-section (1),

19. (1) Any person aggrieved by any decision of the court adjudicating a confiscation or ordering the payment of costs may prefer an appeal to the court to which an appeal lies from the decision of such court.

Appeal.

(2) The appellate court may, after giving the appellant an opportunity of being heard, pass such order as it thinks fit confirming, modifying or revising the decision or order appealed against or may send back the case with such directions as it may think fit for a fresh decision or adjudication, as the case may be, after taking additional evidence if necessary:

Provided that an order enhancing any fine in lieu of confiscation or for confiscating goods of greater value shall not be made under this section unless the appellant has had an opportunity of making a representation and if he so desires of being heard in his defence.

(3) No further appeal shall lie against the order of the court of appeal.

20. (1) Any person who contravenes the provisions of sections 3, 4, 5, 7, 8, 9, 10 or sub-section (2) of section 11 shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Penalty.

(2) Any person who contravenes the provisions of section 6 or sub-section (1) of section 11 shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than one thousand rupees:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which shall not be less than three months but which may extend

to two years and with fine which shall not be less than five hundred rupees.

Offences
by com-
panies.

21. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company, for the conduct of business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished according:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm, or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

Offences
to be
cog-
nizable
and
bailable.

22. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under this Act shall be bailable.

2 of 1974.

(2) For the avoidance of doubts, it is hereby declared that every offence punishable under this Act shall be cognizable.

Protec-
tion of
action
taken in
good
faith.

23. No suit, prosecution or other legal proceeding shall lie against the Central Government or any State Government or any officer of the Central Government or of any State Government for anything which is in good faith done or intended to be done under this Act.

Applica-
tion of
Act 37 of
1954
not
barred.

24. The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Prevention of Food Adulteration Act, 1954, or the rules made thereunder.

Power
to make
rules.

25. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the conditions and restrictions subject to which educational equipment and other material may be donated or distributed under section 5;

(b) the language in which the notice and other particulars referred to in sub-section (1) of section 6 shall be indicated;

(c) the particulars which are to be indicated under clause (i) of sub-section (1) of section 6;

(d) the particulars which a container or label shall not bear under clause (e) of sub-section (2) of section 6;

(e) the matters to be included in the information which reaches pregnant women or mothers of infants under clause (g) of sub-section (1) of section 7;

(f) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form, or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Every child has a right to be adequately nourished as a means of attaining and maintaining health. Infant malnutrition is a major contributory cause of high incidence of infant mortality and physical and mental handicaps. The health of infants and young children cannot be isolated from the health and nutrition of women. The mother and her infant form a biological unit. Breast-feeding is an integral part of the reproductive process. It is the natural and ideal way of feeding the infant and provides a unique biological and emotional basis for healthy child development. The anti-infective properties of mother's milk protect infants against diseases. The effect of breast-feeding on child-spacing, on the health and well-being of the mother, on family health, on family and national economy and on food production is well-recognised. Breast-feeding is, therefore, a key aspect of self-reliance and primary health care. It is, therefore, essential to protect and promote breast-feeding and to protect pregnant women and nursing mothers from any influence that could disrupt it.

2. Inappropriate feeding practices lead to infant malnutrition, morbidity and mortality in our children. Promotion of infant milk foods and related products like feeding bottles and teats do constitute a health hazard. Promotion of infant milk foods and related products has been more extensive and pervasive than the promotion of information concerning the advantages of mother's milk and breast-feeding, and contributes to decline in breast-feeding. In the absence of strong interventions designed to protect, promote and support breast-feeding, this decline can assume dangerous proportions subjecting millions of infants to greater risks of infections, malnutrition and death.

3. In the light of the foregoing considerations, and in view of the vulnerability of infants in the early months of life to the aforesaid risks and the risks involved in inappropriate feeding practices, including the unnecessary and improper use of infant milk foods and feeding accessories, it has become necessary to regulate the marketing of such products. For the proper nutrition and health of the world's children, the World Health Assembly adopted in May 1981, an International Code of Marketing of Breast Milk Substitutes. The Government of India recognised this Code and adopted the "Indian National Code for Protection and Promotion of Breast-Feeding" (hereinafter referred to as the Code) in December, 1983.

4. The Code envisages that there shall be no advertising or other form of sales promotion of infant milk foods, feeding bottles and teats. The Code, in accordance with this general principle enjoins the health authorities to encourage and protect breast-feeding, and also prescribes several measures to control the marketing and promotion of infant milk foods, feeding bottles and teats.

5. The Bill proposes to give effect to the principles and aims of the Code. Accordingly, it prohibits advertisements of infant milk foods and

feeding bottles and also prescribes measures to ensure that in the marketing of infant milk foods, etc., no impression is given that bottle feeding is equivalent to, or better than, breast-feeding. The provisions relating to labelling and quality control of such foods and bottles are proposed to be implemented through the concerned Departments in the State Governments and Union territory Administrations under the overall control of the Ministry of Health and Family Welfare. Contravention of the provisions of the Bill will be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees or with both. However, the contravention of certain provisions of the Bill relating to labelling or quality control of such foods will be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than one thousand rupees.

6. The Bill seeks to achieve the above objects.

NEW DELHI;

P. V. NARASIMHA RAO.

The 5th November, 1986.

FINANCIAL MEMORANDUM

Clause 12 of the Bill provides that any food inspector appointed under section 9 of the Prevention of Food Adulteration Act, 1954, or any officer not below the rank of a Class I officer authorised by the State Government may, if he has any reason to suspect that any provision of clause 6 or clause 11 has been or is being contravened, enter and search at any reasonable time any factory, building, business premises, etc., where such contravention has been or is being done.

2. Clause 13 of the Bill empowers any food inspector or the officer so authorised to seize any infant milk food or feeding bottle or container thereof in respect of which the provisions of the Bill have been or are being contravened and retain it for a period not exceeding ninety days from the date of the seizure under that clause.

3. The implementation of the above provisions of the Bill will not require any additional staff by the Central Government, since the said provisions will be implemented through the machinery available in the concerned States and Union territories and dealing with the administration of the Prevention of Food Adulteration Act, 1954.

4. The provisions of the Bill, therefore, do not involve any additional expenditure of a recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 25 of the Bill empowers the Central Government to make rules, by notification in the Official Gazette, to carry out the provisions of the proposed legislation. The rules may be made, *inter alia*, to prescribe the conditions and restrictions subject to which educational equipment and other material relating to infant milk food may be donated or distributed, the language in which the notice and other particulars shall be indicated on a container of infant milk food or any label affixed thereto, the particulars which should be indicated on such container or the label affixed thereto, the particulars which such container or label shall not bear and the matters to be included in the information which reaches pregnant women or mothers of infants.

2. The matters in respect of which rules may be made under clause 25 are essentially matters of detail or procedure. The delegation of legislative power is, therefore, of a normal character.

SUDARSHAN AGARWAL,
Secretary-General.

